Supreme Court of the United States

No. 209

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PETITIONER,

versus

TWIN CITY POWER COMPANY OF GEORGIA, *ET AL.*, RESPONDENTS

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

The Respondents, Twin City Power Company of Georgia and William P. Dauchy, its Mortgagee, pray that the Court deny the petition for certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered April 12, 1955.

OPINIONS BELOW

The opinion of the Court of Appeals (pp. 1a-10a, *infra*) is reported at 221 F. (2d) 299. The District Court filed three opinions, dated October 4, 1949 (R. 1-19), August 27, 1953 (R. 100-112) and November 14, 1953 (R. 113-117).

In the companion case of *United States v. Twin City Power Company*, the opinions of the District Court corresponding to the first two are reported at 86 F. Supp.

467 and 114 F. Supp. 719. The opinion of the Court of Appeals for the 4th Circuit is reported at 215 F. (2d) 592. Certiorari was granted to review this decision, 348 U. S. 910, and the cause is pending for argument on the merits as No. 21, October Term, 1955.

JURISDICTION

The judgment of the Court of Appeals (Petition 20a) was entered August 30, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. A., Sec. 1251(1).

QUESTION PRESENTED

Where concurrent findings of Commissioners, District Court and Court of Appeals have established as a fact that the potential use of the Twin City properties for power purposes was so probable at the time of taking as to affect the market value of the property and the Courts below have awarded judgments for this market value as the "just compensation" required by the constitution, should this value be denied the landowner because these properties lie along a stream, even if it is "navigable water of the United States" within the meaning of the Federal Power Act, and because they are being taken by the United States for water power and flood control purposes under the Flood Control Act of 1944?

STATUTE INVOLVED

The "Flood Control Act of 1944", enacted December 22, 1944, 58 Stat. 887, portions of which are quoted in the petition (2-3), is pertinent to the question presented.

STATEMENT

As indicated in the Petition, this is a companion case to *United States v. Twin City Power Company*, 215 F. (2d)

592 (C. A. 4), certiorari granted, 348 U. S. 910, No. 21, this Term. The facts of the two cases are substantially the same and the legal issue is identical.

Both cases arose out of condemnation proceedings instituted by the United States to acquire lands for use in connection with its huge Clark Hill hydroelectric development. Contemporaneously it took the lands of the Twin City Power Company of Georgia in proceedings instituted in the Southern District of Georgia and the lands of the parent company, Twin City Power Company, in proceedings instituted in the Western District of South Carolina.

After motions filed by the United States to strike certain defenses were denied (*U. S. v. 1523.63 Acres of Land*, 86 F. Supp. 467, R. 1-19) the issues were referred to Commissioners by each of the two District Courts. The report of May 14, 1953 (R. 20-29) found that the properties of Twin City "were peculiarly adapted for use as a site or as an integral portion of a site for a hydro-electric development by reason of their location in proximity to and along the Savannah River" (R. 81). The Report found that the sound market value of the Twin City lands in South Carolina and in Georgia aggregated $1,257,033.00 and allocated this money among the several tracts on an acreage basis (R. 89-90).

On objections filed by the United States and by Twin City pursuant to Rule 53(e)2, each District Court affirmed the material findings of the Commission and awarded judgment thereon. (*U. S. v. 3928.09 Acres*, 114 F. Supp. 719, R. 100-112.) Motions for new decrees, filed in each court, were denied (R. 113-117).

The Court of Appeals for the Fourth Circuit on August 30, 1954, affirmed the judgment entered in the Western District of South Carolina (215 F. (2d) 592) and the Court of Appeals for the Fifth Circuit on April 12, 1955, affirmed

the judgment entered in the Southern District of Georgia (229 F. (2d) 299).

REASONS FOR DENYING THE WRIT

Twin City's reasons for opposing certiorari are the same as those set out in its Brief in Opposition in No. 21, and apply with equal force here. Since that brief was filed, the Court of Appeals for the Fifth Circuit in this cause has reached the same conclusion as did the Fourth Circuit. The reasoning of that opinion is commended to the Court for its consideration on the petition.

In view of the fact that the records are identical in every phase which would affect the decision here, the Court may wish to withhold action on the petition in this cause until after oral argument in No. 21.

CONCLUSION

For these reasons the Respondents respectfully ask that the petition be denied, or, in the alternative, that the judgment be affirmed.

DAVID W. ROBINSON,
Counsel for the Respondents.

Columbia, S. C.,
July 29, 1955.